



Matt Blunt, Governor
State of Missouri

Gregory A. Steinhoff, Director
Department of Economic Development

Division of Credit Unions
301 West High Street, Room 720
PO Box 1607
Jefferson City, Missouri 65102
Phone: (573) 751-3419
Fax: (573) 751-6834
Email: cu@ded.mo.gov
www.cu.ded.mo.gov

Sandra K. Branson
Director

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TO: Management of Missouri state-chartered credit unions

SUBJECT: Bank Secrecy Act (BSA) compliance

This Bulletin serves the purpose of alerting Missouri state-chartered credit unions to the increased sensitivity of BSA compliance, and to bring to credit unions' attention that BSA compliance is an area receiving increased emphasis during examinations in 2005. This Bulletin advises credit unions about new reporting requirements the Missouri Division of Credit Union's (Division) must follow and provides guidance as to the Division's expectations of state chartered credit unions.

History

In October 2004, the Financial Crimes Enforcement Network (FinCEN) entered into agreements (known as Memorandums of Understanding) with all federal banking regulators, including the National Credit Union Administration (NCUA), concerning the reporting of significant BSA violations. FinCEN, under delegated authority from the Department of the Treasury, has overall authority for enforcement and compliance of financial institutions with the BSA. The agreement went into effect on December 1, 2004. The Division signed a similar agreement with FinCEN on May 27th and all other state credit union and bank regulators will be bound to similar reporting requirements. Currently, FinCEN is negotiating with state regulators to develop separate agreements with each state. Ultimately, the collective goal of the parties is to enhance communication and coordination to help financial institutions identify, deter and interdict terrorist financing and money laundering. While BSA is not a new requirement, it has recently been the focus of heightened attention. Due to these pressures by Congress, FinCEN is indicating that the "honeymoon" with BSA compliance is now over and that compliance is mandatory and expected.

Reporting Expectations of the Division

Under the agreement entered into by NCUA, the Division and FinCEN, the Division is expected to identify and report significant BSA compliance violations to the NCUA, who will then report these violations to FinCEN.

Correction of Violations

Once a significant BSA violation has been identified by examiners, it is important that credit union management correct the violation as soon as possible. Division examiners will set-up an acceptable time frame for the BSA violation to be corrected. Under NCUA plans with FinCEN, this time frame must be no longer than 90 days from the date the violation was discovered by the examiner. Individual credit unions will be required to forward documentation to the Division examiner that shows the significant BSA violation was satisfactorily corrected. After the examiner verifies that satisfactory correction was made, the Division will notify NCUA of the resolution. NCUA will in turn notify FinCEN that satisfactory correction was made. It is imperative that all significant BSA violations be corrected within 90 days of identification by Division examiners.

The Basics of BSA

The Division recommends that credit union management be proactive in identifying weaknesses and problems in their credit union's BSA compliance program. Specifically, credit unions should take the following steps to ensure BSA compliance:

- Enactment of strong BSA policies and procedures, which cover the required elements of BSA;
- Development of a system of internal controls to ensure ongoing BSA compliance;
- Assurance that employees receive sufficient BSA compliance training;
- Testing for BSA compliance, either by independent credit union staff or officials, or by an independent third party;
- Documentation that your credit union is properly meeting the BSA compliance requirements and retention of this documentation; and
- Stressing the importance of BSA compliance to all staff members.

What makes a satisfactory BSA policy will depend on the individual credit union. The highlights of a satisfactory program would include the following:

- Customer Identification Program (CIP)
 - Identification of a member's name, date-of-birth, address, and identification number prior to account opening;
 - Verification of the information obtained.
- Currency Transaction Report (CTR) Filings
 - Are CTRs filed timely (within 15 days) when necessary (involves more than \$10,000 (per day) in cash-in or cash-out)?
 - Does the credit union properly exempt permitted people from filing CTRs by filing a "Designation of Exempt Person" form?
- Suspicious Activity Reports (SAR) Filings
 - Are SARs filed within 30 days after discovery of a suspicious activity?
 - Is staff aware of what activity might be termed "suspicious"?

- OFAC - Searching OFAC Lists for Prohibited Countries, Organizations and Individuals
 - Does the credit union block or freeze accounts and transactions that are found to match the prohibited OFAC listing?
 - Does the credit union report this information to FinCEN immediately?
- Money Transfer Services
 - Credit unions that provide money transfer services (i.e. wire transfers) must obtain and record specific information on each money transfer of \$3,000 or more.
- Maintain Necessary Information for the Purchase or Issuance, by Currency, Credit Union Checks, Cashiers Checks, Travelers Checks, and Money Orders for Amounts Between \$3,000 and \$10,000.

However, it should be noted that the above is not all-inclusive of a satisfactory policy. If assistance is needed, it is recommended that you contact this office, or the Missouri Credit Union Association's Information Services.

Other BSA Compliance Requirements

The importance of following BSA requirements cannot be over-emphasized. Federal government regulators, FinCEN, The Department of Homeland Security, OFAC and others, have elevated even more the importance of blocking transactions that occur at financial institutions that might benefit terrorism and drug trafficking. To this end, they have elevated the importance of BSA and are requiring that financial institutions, including credit unions and their regulators, elevate the importance of examining for BSA compliance. Federal monetary penalties can be assessed to financial institutions who do not comply with BSA; and both criminal charges and civil money penalties can be brought against individuals who are willfully non-compliant with BSA requirements.

Senior management, including the Board of Directors, will need to ensure that their credit union's policy and procedures are compliant with BSA, that employees are properly trained on BSA, and that internal controls are in place to ensure that employees are properly implementing these policies and procedures.

The requirements for BSA compliance do not vary based on the asset size of the credit union; however, the cost and type of action to achieve compliance will vary. For example, a small credit union that does not handle cash would need to have a BSA policy, but this credit union will have a very different policy (less complex and much smaller) than a large, multi-branch credit union.

Frequently Asked Questions and Answers Regarding BSA Compliance

1. If a credit union has a BSA policy but it does not include all the required elements, is it a significant violation?

Yes. A credit union must have a BSA policy addressing all the required elements. If the BSA policy incorporates one or more required elements via referencing other written policies, this is acceptable.

An existing policy that needs improvement, but which contains all the required elements, may not be a significant violation. Determination that a significant BSA violation exists will depend on examiner judgment. Examiners should consider: 1) whether the policy is generally appropriate for the size and complexity of the credit union, 2) if the policy reflects the products and services offered by the credit union, and 3) if weak elements can be strengthened in a rapid manner (less than 3 months) with minimal or no examiner oversight.

2. If a credit union cannot locate its written policy but is following adequate procedures, is there a violation?

Yes. A credit union must have a board approved written policy. For example, this would occur when a credit union cannot readily produce its policy for review. No written policy is a pervasive violation, even if adequate procedures exist.

3. If a credit union generally files currency transaction reports (CTRs), but missed one or two during the exam periods, is there a violation?

It depends on Division judgment; examiners will consider 1) the number of CTRs filed during a year and 2) the reason that the CTR was improperly filed. If a CU usually files 10 CTRs each year and forgets 2, this is a significant BSA violation. If a CU usually files 1,000 CTRs each year and forgets 2, this is probably not a significant BSA violation. In general, if the rate of error is more than 1 percent or greater than 20 CTRs, an examiner should assess the violation as significant. In both cases, the CU must back-file the incomplete CTR, audit its filings to ensure no others were missed, and strengthen internal controls to reduce the likelihood that future CTRs will not be filed timely.

4. If CU staff members were given BSA training when they were initially hired but have not had training within a couple years, is there a violation?

It depends on examiner judgment; examiners should consider 1) whether changes have occurred in staffing (new hires), 2) if continuing staff retain knowledge of BSA requirements (up to date policies, regular completion of CTRs), 3) whether person(s) charged with oversight of the BSA program have sufficient knowledge to catch and correct errors, and 4) if a process exists to identify staff members with inadequate BSA awareness and provide them with training.

5. If CU staff tell the member to break up a large cash deposit into smaller amounts to avoid filing a CTR (in the interest of customer service), is there a significant violation? Does the CU have to file a CTR anyway?

Yes, splitting deposits to avoid reporting or “structuring” is a significant BSA violation. In this case, a CTR must still be filed if the member’s total daily cash deposits are over \$10,000. In addition, a SAR must also be filed, regardless of the amount. This scenario demonstrates inadequate staff training (staff suggested the member engage in structuring – a money laundering activity), an inadequate process for aggregating transactions (staff doesn’t anticipate the CU will “find” transactions if they are split), and weak oversight of the BSA program.

6. Do small/non-cash operation CUs have to meet the same standards as large CUs?

Yes, but the cost and type of action taken to achieve compliance will vary. For example, all CUs must have a written BSA policy. A small, non-cash CU would probably have a smaller less complex policy than a large, multi-branch CU. Nevertheless, the small CU's written policy would need to address all products and services offered by the CU, and establish a reasonable method for verifying member identity (when a new loan or share account is opened).

7. Will our credit union be examined separately for BSA compliance?

Probably not. At this time, the Division has plans to complete its BSA compliance examination as part of the normal examination process. However, if it is later determined that FinCEN has an earlier deadline, this may not continue to be the case.

8. Are the examiners and the Division eager to find credit unions that are not in compliance?

No. The examiner will discuss the problem and recommend corrective actions. If possible, the Division will encourage the credit union to correct the problem while the examination is still in progress. For example, the credit union may need to update its policy, schedule training, arrange for independent testing or file CTR’s. Prompt resolution of the problem is our goal and intent in distributing this bulletin.

We are providing this bulletin in order to minimize the possibility of additional action from the Division, NCUA and FinCEN. If you have any questions, please do not hesitate to call your examiner or the Jefferson City office.

Other Resources

Further guidance on BSA can be found at the following:

FinCEN – www.fincen.gov (click on BSA guidance)

CUNA Compliance - www.cuna.org/compliance (webinars & training)

Missouri Credit Union Association – www.mcua.org (Regulation and Legislation)

Questions concerning this bulletin can be directed to your assigned examiner or the Division of Credit Unions office in Jefferson City at 573-751-3419.